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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/829,443	04/22/2004	Martin E. Rogers	4271-23	6332
23117	7590	01/07/2005	EXAMINER	
NIXON & VANDERHYE, PC 1100 N GLEBE ROAD 8TH FLOOR ARLINGTON, VA 22201-4714			SASTRI, SATYA B	
			ART UNIT	PAPER NUMBER
			1713	

DATE MAILED: 01/07/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/829,443

Applicant(s)

ROGERS ET AL.

Examiner

Satya B Sastri

Art Unit

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 22 April 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
- 4a) Of the above claim(s) 5-11 and 17-33 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-4 and 12-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 1-33 are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/22/04.
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_.

### DETAILED ACTION

1. This office action is in response to application filed on April 22, 2004. *Claims 1-33* are now pending in the application.

#### *Election/Restrictions*

2. Restriction to one of the following inventions is required under 35 U.S.C. 121:
- I. *Claims 1-4, 12-16* drawn to a flame retardant superabsorbent polymer particles and method of making the same, classified in class 524 and 523, subclass 414 and 200, respectively.
  - II. *Claims 5-11, 17-33*, drawn to an article comprising resin and flame retardant superabsorbent polymer particles and method of making the same, classified in class 428 and 523, subclass various.
3. Inventions I and II are related as mutually exclusive species in an intermediate-final product relationship. Distinctness is proven for claims in this relationship if the intermediate product is useful to make other than the final product (MPEP § 806.04(b), 3rd paragraph), and the species are patentably distinct (MPEP § 806.04(h)). In the instant case, the intermediate product is deemed to be useful in coating compositions for preventing combustion and the inventions are deemed patentably distinct since there is nothing on this record to show them to be obvious variants. Should applicant traverse on the ground that the species are not patentably

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distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions anticipated by the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Mr. Brian Davidson on December 28, 2004 a provisional election was made with traverse to prosecute the invention of I, claims 1-4. However, upon further consideration, the examiner has joined the method of making flame retardant superabsorbent polymer particles with the composition claims to examine *claims 1-4, 12-16*. Affirmation of this election must be made by applicant in replying to this Office action. *Claims 5-11, 17-33* are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

*Claim Rejections - 35 USC § 102*

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

8. *Claims 1-4, 12-16* are rejected under 35 U.S.C. 102(b) as anticipated by Hosokawa et al. (US 6,313,231 B1).

The prior art to Hosokawa et al. discloses **superabsorbent resin composition** comprising a superabsorbent resin, a metal compound and a chelating agent (abstract). Disclosed examples of chelating agent include water-soluble inorganic phosphoric acid compounds such as polyphosphoric acid, pyrophosphoric acid and sodium or potassium salts thereof (column 7, lines 1-10). The chelating compound may be used in amounts ranging from 0.01 to 5 parts, per 100 parts of the superabsorbent resin by weight (column 9, lines 5-9). The disclosed processes of producing the same may be by dry mixing the superabsorbent resin with the metal compound and the chelating agent or by spraying an aqueous solution of a metal compound and the chelating agent onto the superabsorbent resin either in a dry state or water-containing condition and, if desired, drying the resin. Thus, the instant claims are anticipated by Hosokawa et al.

*Conclusion*

9. Any inquiry concerning this communication or earlier communications from the

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examiner should be directed to Satya Sastri at (571) 212 1112.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Wu can be reached at (571) 212 1114.

The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Satya Sastri*

SATYA SASTRI

4 January, 2004

TATYANA ZALUKAEVA  
PRIMARY EXAMINER

*Tatyana*